

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

TELEXFREE, INC.,
TELEXFREE LLC,
JAMES M. MERRILL,
CARLOS N. WANZELER,
STEVEN M. LABRIOLA,
JOSEPH H. CRAFT,
SANDERLEY RODRIGUES DE
VASCONCELOS,
SANTIAGO DE LA ROSA,
RANDY N. CROSBY and
FAITH R. SLOAN,

Defendants
and

TELEXFREE FINANCIAL, INC.,
TELEXELECTRIC, LLC and
TELEX MOBILE HOLDINGS, INC.,

Relief Defendants.

Defendant.

No. 1:14-CV-11858-NMG

**JULY 15, 2015 STATUS REPORT OF THE
DEPARTMENT OF JUSTICE
CONCERNING PARALLEL CRIMINAL PROCEEDING**

By an order dated October 8, 2014, the Court granted the Department of Justice's motion to intervene in these proceedings, and further granted its motion to stay discovery until parallel criminal proceedings are resolved. *See Order (Dkt # 275)* at 10 ("Discovery in this civil enforcement action brought by the SEC will be STAYED pending resolution of the parallel criminal proceedings against defendants Merrill and Wanzeler in Case No. 14-cr-40028-TSH."). The Court also ordered the Department of Justice ("DOJ") to file a status report on the progress of the criminal case on or before January 15, 2015, and every three months thereafter. *Id.* On January 15, 2015, the Government filed a status report (*Dkt # 289*). On April 15, 2015, the Government filed a second status report (*Dkt # 295*). The Government is now filing a third status report pursuant to the Court's order.

The Status Of The Criminal Case
U.S. v. James Merrill and Carlos Wanzeler, No. 14-cr-40028-TSH

The criminal case is continues to proceed smoothly with the government providing discovery on a rolling basis, however, discovery is not yet complete. As described in previous status reports, there is an extremely large volume of discoverable material in this case. The volume and scope of discovery combined with the fact that the case involves documents and witnesses outside the United States, documents in a foreign language, and some documents which the Government has subjected to review by a “taint team” has caused this case to be designated a complex case by the Magistrate pursuant to 18 U.S.C. Section 3161(h)(7)(B)(ii). (*U.S. v. Wanzeler et al.*, 14-cr-40028, *Dkt* # 118).

Since the last status report, the government has produced a large volume of discovery materials to the defense. In addition to providing materials to the defense, the government has obtained additional materials from foreign governments. Despite the volume of discovery produced to date, there are still materials which need to be provided.

Discovery thus far provided to the defendant includes:

1. A database of materials seized from TelexFree’s headquarters in April 2014 (24 GB);
2. A database of materials produced to the government by the Trustee overseeing TelexFree’s affairs (75 GB);
3. The contents of a personal email account belonging to defendant James Merrill;
4. The contents of two personal email account belonging to defendant Carlos Wanzeler;
5. The contents of a personal email account belonging to TelexFree principal,

Carlos Costa;

6. Approximately 45 GB of additional information received as a result of a search warrant executed at an internet service provider – consisting largely of TelexFree-related YouTube videos and back-up and subscriber data;
7. Various recordings made by undercover Homeland Security Investigations (“HSI”) agents at TelexFree conference and in conversations with a TelexFree promoter and screen shots from an undercover promoter account established by HSI agents;
8. Copies of the Search and Seizure Warrant for an Amazon Web Services Account;
9. Translated and untranslated interview reports from Brazilian Federal Police of various individuals;
10. The Court order on Government’s Motion to Amend Sealing Orders dated April 2, 2015;
11. The Ernst and Young Forensic Accounting Report dated February 2015 (both in Portuguese and English) which was completed pursuant to the request of a court in Brazil;
12. A copy of the application package for and order pursuant to 18 United States Code §2703(d) Orders for records from iBasis Inc. (Docket # 14-mj-4054-DHH).

In the coming months, the government will produce additional discovery including:

- 1) Information obtained from Brazilian prosecutors and law enforcement agents. The Brazilian authorities have produced a large amount of data

- 2) Data (5 to 10 TB) received from a cloud based information storage company in response to a search warrant.

Both the materials obtained from the Brazilian authorities and the cloud based information storage company are voluminous and the government working with defense counsel to determine the best way to produce these materials to the defendant.

Magistrate Judge Hennessy continues to keep close tabs on the parties' progress, scheduling status conferences approximately every six to eight weeks. The next status conference is scheduled for August 12, 2015. The Government anticipates additional status conferences before discovery is complete.² At this stage, assuming the case goes to trial, it would still be difficult to predict a trial date.

Per the Court's order of October 8, 2015, DOJ will submit another status report three months hence, on September 15, 2015.

Respectfully submitted,

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Date: July 15, 2015

¹ The vast volume of data gathered by Brazilian authorities is due in part to the search warrants they executed and the fact that TelexFree was partly based in Brazil and had hundreds of thousands of Brazilian investors.

² District Court Judge Timothy S. Hillman is also monitoring the progress of the criminal case. Judge Hillman allowed both the Government's request to intervene and the Government's request for a stay of discovery in a related class action case. See, *In Re: Telexfree Securities Litigation*, MDL No. 14-md-2566-TSH (*Dkt* # 111). The Government has been appearing at the status conferences in the *Telexfree Securities Litigation* matter and updating the Court on the status of the criminal case.

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants, on July 15, 2015.

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